

## Update: Child Protective Proceedings Benchbook

### CHAPTER 9

#### Pretrial Proceedings

##### 9.12 Required Procedures for Establishing Paternity

###### A. Definition of “Father”

Insert the following case summary after the first bullet on p 9-10

*In re CAW*, \_\_\_ Mich App \_\_\_ (2002) involved a married couple, Deborah Weber and Robert Rivard, and their children. One of the children, CAW, was conceived and born during the marriage, but the identity of CAW’s natural father was unknown. Both Weber and Rivard testified that CAW may not be the biological child of Rivard and that a man outside of the marriage, the appellant, may be CAW’s father. After the parental rights of both Weber and Rivard were terminated, appellant filed a motion to intervene based upon his belief that he was CAW’s biological father. The trial court denied the motion indicating that appellant had no standing to intervene.

The Court of Appeals held that although appellant would not have standing to pursue paternity under the Paternity Act, MCL 722.714 et seq., he did have standing to seek to establish paternity during the pendency of a child protective proceeding, pursuant to MCR 5.903(A)(1). The Court stated:

“The definition of ‘child born out of wedlock’ in MCR 5.903(A)(1) is less restrictive than that under the Paternity Act or the probate code. Our courts have established that under the Paternity Act, there must have been a prior determination that a child was not the issue of a marriage for a putative father to have standing to establish paternity. *Girard [v Wagenmaker]*, 437 Mich 231, 242-243 (1991)]. However, MCR 5.903(A)(1) uses the language, ‘a child

determined by judicial notice or otherwise.’ Although the difference is subtle, we find it distinct. MCR 5.921 allows the court to determine the identity of a putative father during the pendency of a protective proceeding if the court *at any time during the pendency* of the proceedings determines that the child has no father as defined by the court rules. Reading MCR 5.921 in conjunction with MCR 5.903 under the authority of *Montgomery, supra*, we find that during child protective proceedings, the court can determine the child to be born out of wedlock and then take appropriate steps to determine the identity and rights of the biological father.”

The Court of Appeals reversed the trial court, concluding that appellant has standing to intervene in this case and should be given the opportunity to establish his paternity. *Id.* at \_\_\_\_\_. However, the Court cautioned “this should not be interpreted to mean that appellant is entitled to any rights over the child. We find only that appellant should be given the opportunity to establish his paternity. If appellant establishes that he is the child’s biological father, his fitness must then be tested.” *Id.* at \_\_\_\_\_.